

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,
Debtors.¹

PROMESA
Title III

Case No. 17-BK-03283 (LTS)

**RESPONSE IN SUPPORT OF URGENT MOTION OF OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a)
AND 362, FOR ENTRY OF ORDER ENFORCING AUTOMATIC STAY AND COURT’S
JUNE 29, 2017 ORDER CONFIRMING APPLICATION OF AUTOMATIC STAY WITH
RESPECT TO GDB RESTRUCTURING**

[Dkt. # 3797]

Financial Guaranty Insurance Company (“**FGIC**”), by and through its attorneys Rexach & Picó, CSP and Butler Snow LLP, files this response (this “**Response**”) in support of *Urgent Motion of Official Committee of Unsecured Creditors, Pursuant to Bankruptcy Code Sections 105(a) and 362, for Entry of Order Enforcing Automatic Stay and Court’s June 29, 2017 Order Confirming Application of Automatic Stay With Respect to GDB Restructuring* [Dkt. # 3797] (the “**Motion**”).² In support of the Motion, FGIC respectfully states as follows:

¹ The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms as in the Motion.

1. FGIC provides financial guaranty insurance covering in excess of \$1.17 billion in principal amount of bonds outstanding and issued by the Commonwealth of Puerto Rico (the “*Commonwealth*”) and various Commonwealth instrumentalities.³ FGIC insures approximately \$282.4 million in principal amount of outstanding general obligation bonds issued by the Commonwealth and bonds guaranteed by the Commonwealth (e.g. Public Building Authority bonds). As “public debt,” general obligation bonds are entitled to a first-priority payment status under the constitution of the Commonwealth and related statutes and are entitled to payment before all other obligations payable from the Commonwealth’s general revenues.

2. FGIC also insures approximately \$447 million in principal amount of outstanding bonds issued by the Puerto Rico Highways and Transportation Authority (“*PRHTA*”). In addition, FGIC insures bonds issued by the Puerto Rico Convention Center District Authority and the Puerto Rico Infrastructure Financing Authority. The bonds issued by these authorities, including PRHTA, are secured by, among other things, enforceable, perfected liens on pledged special revenues.

3. To date, however, the Oversight Board has disputed that the Commonwealth’s general obligation bonds are protected and secured by a first lien on all available resources of the Commonwealth. The Oversight Board has also contested the validity of the statutory and perfected contractual liens securing certain of the authority bonds insured by FGIC. To the extent that the bonds insured by FGIC (or FGIC’s related claims) ultimately may be determined to be less than fully secured, then FGIC’s claims that are not fully secured are unsecured claims, and

³ Under relevant provisions of the applicable bond documents, bond insurance policies, and applicable law, payment by FGIC neither satisfies nor discharges an issuer’s obligation to pay and, to the extent FGIC makes such payments, it obtains assignments of rights from the bondholders, becomes owner of the bonds, and/or becomes subrogated to the rights of bondholders and effectively steps into the shoes of such bondholders.

with respect to such unsecured claims against the Title III Debtors, the Committee acts in all respects as a fiduciary to FGIC.

4. As the Committee states in the Motion, the GDB Restructuring Act and the proposed GDB Restructuring violate the automatic stay by, among other things, providing for the setoff of certain of the Title III Debtors' deposits, the creation of a lien against public funds held in trust or in a fiduciary capacity until they are to be transferred to the Recovery Authority and the transfer of GDB's assets, including public funds, to the Recovery Authority. *See* Motion, ¶ 23. Consequently, any action to recover, transfer or setoff such funds is expressly stayed pursuant to section 362 of the Bankruptcy Code, section 301(a) of PROMESA, and the Stay Order pending a hearing and order from this Court modifying or lifting the automatic stay. As a creditor of the Commonwealth and PRHTA, FGIC is affected by any provision of the GDB Restructuring affecting assets of the Title III Debtors and has standing under section 1109(b) of the Bankruptcy Code to appear and be heard in connection with any such motion for relief from the automatic stay.

5. In particular, in at least one instance, a setoff of deposited funds against the claims of a Title III Debtor would satisfy a Title III Debtor's obligations to the GDB that are subordinate to a Title III Debtor's bondholders. Specifically, PRHTA is purportedly indebted to the GDB with respect to certain lines of credit. Such repayment, however, is subordinated to the repayment of PRHTA bonds. For example, the 2010 official statement for the PRHTA bonds states that "[PRHTA] has financed some of its recent capital expenditures and working capital requirements with Government Development Bank lines of credit, **the repayment of which is subordinate to the [PRHTA Bonds].**"⁴

⁴ *See* Highway Revenue Refunding Bonds Offering Official Statement at 32 (June 17, 2010), http://www.gdb-pur.com/investors_resources/documents/PRHighwayaFIN_000.pdf (emphasis added).

6. The Title III Debtors' funds held by the GDB are property of the Title III Debtors and serve to secure certain of the bonds issued by certain of the Title III Debtors. The GDB Restructuring and the GDB Restructuring Act may not abrogate the rights of the Title III Debtors in their property or the rights of bondholders in their collateral under the guise of a Title VI proceeding.

7. FGIC has not undertaken an investigation of any other claims and assets of the Title III Debtors that are referenced by the Committee in the Motion. As a fiduciary for all unsecured creditors, the Committee has appropriately undertaken such an investigation. FGIC supports the Committee's efforts to pursue and protect those assets.

8. Accordingly, for the reasons stated herein and in the Motion, FGIC respectfully requests that the Court grant the Motion and enter the Proposed Order attached thereto, and to grant any and all relief that the Court deems appropriate under these circumstances.

Dated: August 29, 2018

Respectfully submitted,

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